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(1876) 3 Tenn. Ch. 228, 231; *Bean v. Haffendorfer Bros.* (1887) 84 Ky. 685. The purchaser alone is bound, not the court. The statement made in the cases, that the purchaser buys subject to the future order of the court upon the equities of the parties to the suit, would seem to refute any idea of a contract. *Downer v. Cross* (1853) 2 Wis. 371; *Lupton v. Almy* (1856) 4 Wis. 242.

The results reached in the cases necessitate the conclusion that a receiver's sale is merely a judicial means of transferring the interest of the defendant in the property, "whether it may be," *Arnold v. Donaldson* (1888) 46 Oh. St. 73, without a contract arising at any time. The purchaser becomes a quasi party to the action, *Blossom v. Milwaukee etc. Railroad Co.* (1863) 1 Wall. 655; *Porter v. Hanson* (1880) 36 Ark. 591, and submits himself to the decrees of the court, *Matter of Attorney-General v. Continental etc. Co.* (1883) 94 N. Y. 199; *Allen v. East* (Tenn. 1874) 4 Baxt. 308, which acts on general equitable principles irrespective of contract. *Fisher v. Hersey*, *supra*; *Strong v. Catton*, *supra*. A recent case in New York, *People v. New York Building-Loan Banking Co.* (N. Y. 1907) 82 N. E. 184, inconsistent with a previous holding, *People v. Open Board etc. Co.*, *supra*, illustrates this theory. A purchaser asked to be relieved from his purchase because of defect of title. The court set aside the sale, and ordered the repayment of the deposit, but refused interest thereon, and costs of examination of title, and of the action, saying that "the purchaser cannot demand damages as for breach of a contract made by the court through its officer or agent, but has to rely on the court to do equity under the circumstances." Therefore his claim for compensation "is founded upon equity and not upon the breach of contract."

SUBSCRIPTIONS TO STOCK OF CORPORATIONS NOT YET FORMED.—There is a divergence of view in regard to the nature of the obligation arising from subscriptions to the stock of corporations not yet formed. In a recent Nebraska case the court suggested as dictum that the "subscriptions constitute a contract between the subscribers themselves." *Nebraska Chicory Co. v. Sednicky* (1907) 113 N. W. 245. With the desire to give the subscription binding force from the time of its making this theory has been frequently advanced. *Lake Ontario etc. R. R. Co. v. Mason* (1857) 16 N. Y. 451; *Minneapolis etc. Co. v. Davis* (1889) 40 Minn. 110. Assuming a contract between the subscribers, it may be regarded, first, as a contract to make offers to the corporation; second, as a contract to pay for the stock together with offers to the corporation; third, as a contract to pay the corporation on condition that it accepts the subscription. Since under the first two constructions the offer is revocable, the corporation does not obtain the right of a contracting party at the time of the subscription, as held in the above cases. The only possible right left to it, therefore, is that of a beneficiary which it would be denied in some jurisdictions since the subscriptions are not made for the sole benefit of the corporation. *Baxter v. Camp* (1898) 71 Conn. 245. But all these constructions seem inconsistent with the intention of the parties, and it is generally held and properly that the subscriptions are mere offers, having no binding effect until accepted; or more

logically that the subscriptions become offers as soon as there is an offeree. *Buffalo, etc., R. R. Co. v. Clark* (N. Y. 1880) 22 Hun. 359; *Yonkers Gazette Co. v. Taylor* (N. Y. 1898) 30 App. Div. 334; *Starrett v. Rockland, etc., Co.* (1876) 65 Me. 374; *Athol etc., Co. v. Carey* (1875) 116 Mass. 471. The decisions conflict as to what constitutes an acceptance of the offer, some requiring an act by an agent of the corporation, as for example, entering the subscriber's name in the stock book, *Starrit v. Rockwell, supra*; or making an assessment on the stock, *Buffalo etc. R. R. Co. v. Clark, supra*, and others requiring the mere act of incorporation. *Buffalo, etc., R. R. Co. v. Dudley* (1856) 14 N. Y. 336, 353; *Phoenix Warehousing Co. v. Bodger* (1876) 67 N. Y. 294. Clearly the latter view is illogical, since the existence of an offeree is not sufficient to establish an acceptance of the offer; but in view of the tendency to make subscriptions binding as soon as possible it is likely to prevail. 1 Cook, Corporations 75. The consideration is properly found in the interest which is acquired by the subscriber, *Buffalo, etc., R. R. Co. v. Dudley* (1856) 14 N. Y. 336, and the theory reiterated in the principal case "that the mutuality constitutes a sufficient consideration" cannot apply where no contract between the subscribers is recognized.

Two other theories have been advanced which give binding effect to a subscription from the date of its making. First, that the subscriber is estopped from revoking the offer. 1 Thompson, Corporations, 1288. Assuming a representation the only acts in reliance thereon are the other offers, and these could not result in a loss unless we assume that the subscribers are estopped from revoking, which would be begging the question; moreover there is the further objection that a promise is not a representation. The result of such a doctrine would be to make an act in reliance on a promise equivalent to a consideration. Second, it is held that if the subscription is a statutory step in the formation of a corporation it is irrevocable because the legislature so intended. 1 Cook, Corporations 75; *Buffalo etc. R. R. Co. v. Dudley, supra*. This is a fair statutory construction and applicable to a limited class of cases.